

Atty. Dkt. No. 023727-2201

**REMARKS**

Applicants respectfully request reconsideration of the present application in view of the remarks that follow.

The present invention provides a flashlight with a battery housing and a replaceable, rotatable head containing a light source assembly that is directed at approximately a right angle to the long axis of the battery housing. The light source assembly is oriented at a fixed angle of  $90 \pm 60$  (in particular embodiments  $90 \pm 30$ ,  $90 \pm 20$ ,  $90 \pm 10$  or  $90 \pm 5$ ) degrees relative to the long axis of the battery housing. The flashlight may also include a glass breaker that efficiently transfers kinetic energy to the impact point. The inclusion of the glass breaker is particularly useful for adapting the flashlight for emergency use. The rotatable head is advantageous because it allows for the head of the flashlight to be rotated without altering the placement of the body of the flashlight (which may be clipped to a user or placed on a flat surface), thereby allowing for control over the placement of the light beam.

The present status of all claims in the application is provided in the Listing of Claims presented herewith beginning on page 2.

**Rejection for Obviousness-type Double Patenting**

The rejection of claims 1, 6, 9-14, 16, 17, 22-27, 31-36, 60-63 and 67-70 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-37 of the primary reference, co-pending Application No. 10/638,123 (now issued, U.S. Patent No. 6,955,446; "the '446 Patent"), in view of the secondary reference, (U.S. patent No. 6,012,824 to Sharrah et al., "the '824 Patent") is respectfully traversed.

Applicant's invention, as defined for example by claim 1, requires a flashlight comprising, *inter alia*, a rotatable head comprising a circular housing connection and a light source assembly, wherein the housing connection is attached to the housing at the front end thereof, wherein the light source assembly is oriented at  $90 \pm 30$  degrees to the long axis of the

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battery housing, and wherein rotatable head is rotatable about the long axis. As acknowledged by the Examiner, the primary reference (the '446 Patent) does not disclose a rotatable head. (See Office Action p.3, lines 7-8).

For the rotatable head, the Examiner relies upon the secondary reference. (See Office Action, p. 3, lines 19-21), asserting that it would have been obvious to one of skill in the art to combine the flashlight disclosed in the primary reference with the rotatable head disclosed in the secondary reference. However, the combination of the primary and secondary references does not teach a flashlight head which rotates about the long axis of the flashlight.

The secondary reference does not disclose a lamp head which rotates about the body of the flashlight. Rather, it teaches a flashlight with a lamp head which pivots from a position in-line with the flashlight body to a position which is perpendicular to the flashlight body. See, for example, col. 2, lines 47-49 of the '824 patent wherein it states, "[a] mounting stem 30 on the end of body 20 is formed for making a pivotable connection with and for mating engagement with a recess 237 formed in the lamp head 200." (See FIG. 2). In addition, Figure 22 shows a perspective view of the flashlight with the lamp head in a pivoted position (i.e., perpendicular to the flashlight body). See col. 2, lines 24-26 and FIG. 22. Thus, as shown in Figs. 1 and 22, the mounting stem 30 (see FIG. 2) allows the lamp head of the flashlight disclosed in the '824 patent to pivot from a position in-line with the major axis (shown in FIG. 1), to a position which is 90 degrees from the major axis (shown in FIG. 22). This is distinct from the present invention which requires that the head of the flashlight is rotatable about the long axis. Thus, because the primary and secondary references, either alone or in combination, do not disclose every feature of the invention as presently claimed, rejection is improper.

Claims 6, 9-14, 16, 17, 22-27, 31-36, 60-63 and 67-70 similarly require that the flashlight head be rotatable about the long axis. For the reasons noted above, the rejection with respect to these claims should also be withdrawn. Reconsideration and allowance of all claims are respectfully requested.

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**Rejection of the Claims Under 35 U.S.C. § 102(b)**

The rejection of claims 22-25, 67, 69 and 70 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,012,824 ("the '824 Patent") to Sharrah et al. is respectfully traversed.

It is fundamental that a rejection for anticipation requires disclosure in a single reference of each and every claim limitation. See MPEP §2131. Applicant's invention, as defined for example by claim 22, requires a flashlight comprising, *inter alia*, a rotatable head comprising a circular housing connection and a light source assembly, wherein the housing connection is attached to the housing at the front end thereof, wherein said light source assembly is oriented at  $90\pm30$  degrees to the long axis of the battery housing, and wherein the rotatable head is rotatable about said long axis." As noted above, the '824 Patent does not teach a flashlight with head that rotates about the long axis of the flashlight.

Instead, the '824 Patent discloses a flashlight lamp head which pivots from a position in-line with the major axis (shown in FIG. 1), to a position which is 90 degrees from the major axis (shown in FIG. 22). Moreover, the specification does not disclose or suggest that the flashlight head can rotate about its major axis, nor do any figures show the flashlight being capable of such rotation. Thus, because the '824 Patent does not teach every feature of the invention as presently claimed, the rejection should be withdrawn.

Because claims 23-25, 67, 69 and 70 similarly require a flashlight head which is rotatable about the long axis, the rejection as to these claims should also be withdrawn. Reconsideration and allowance of all claims are respectfully requested.

Applicants acknowledge that the Examiner has indicated claims 2-5, 7-8, 15, 18-21, 28-30, 37-52, 64-66 and 71-72 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, in view of the remarks presented above, no amendments to the claims will be entered at this time.

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In view of the above remarks, reconsideration and favorable action on all claims are respectfully requested. In the event any matters remain to be resolved in view of this communication, the Examiner is encouraged to contact the undersigned so that a prompt disposition of this application can be achieved.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Respectfully submitted,

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